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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY I., a Person Coming  
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

N.I.,

Defendant and Appellant;

MICHAEL F. et al.,

Respondents.

G042429

(Super. Ct. No. DP012674)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane Shade,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J.  
Agin, Deputy County Counsel, for Plaintiff and Respondent Orange County Social  
Services Agency.

Law Office of Susan A. Barry and Lawrence A. Aufill for Respondents,  
Michael and Shelby F.

\* \* \*

N.I.'s parental rights to her son, Anthony, were terminated in July 2008. At that time, Anthony had been placed with the F. family for more than two years. N.I. was subject to a restraining order to stay away from the F. family, including Anthony, but the restraining order expired at the conclusion of the hearing at which parental rights were terminated. The F.'s adoption of Anthony was on the verge of being finalized about a year later when a series of events caused the Orange County Social Services Agency (SSA) to seek another restraining order against N.I. to protect Anthony and the F.'s. After an evidentiary hearing, the juvenile court granted the restraining order, ordering N.I. not to contact the F.'s or Anthony and to stay at least 100 yards from places they frequented. N.I. appeals from the order granting the restraining order, and we affirm.

#### FACTS

Three-year-old Anthony was detained in December 2005 after his mother had left him alone for hours in a filthy, dangerous home. The mother received intensive services but was unable to reunify with him. We affirmed the termination of reunification services in *N[.] I. v. Superior Court* (Feb. 11, 2008, G039453) [nonpub. opn.] and the termination of parental rights in *In re A.I.* (Feb. 6, 2009, G040503 cons. with G040812) [nonpub. opn.] We incorporate these facts into this opinion by reference and summarize the subsequent events and testimony adduced at the hearing on the restraining order.

The application for the restraining order included declarations from Shelby F., the prospective adoptive mother; Michael F., the prospective adoptive father; and Julie Fulkerson, the social worker assigned to the case. Shelby declared that on June 13, 2009, she saw the mother driving on the street where the F. family lives in Lake Forest. The juvenile court had ordered the identities and address of the prospective adoptive family to be kept confidential in March 2006, when Anthony was placed with them. Shelby declared she and her husband and children were leaving their home in their car around noon when she recognized the mother as the driver of an approaching car. The mother parked on the street, and Shelby went over to her car and asked why she was there. The mother, who was wearing latex gloves, said she did not know who Shelby was. Shelby and her family returned home and called the police. When the police came, the mother drove away.

Michael declared he received a voicemail at work from an anonymous female caller on July 2, 2009. The caller addressed him as “Mike,” and said she had ““some information for you and Shelby, to help you in your legal process with [the mother]. I really feel that I should be reporting things that are really suspicious to the social worker [or] something. It’s a really serious issue. I really want to talk to you directly[;] your family could be in danger. I’ll try back, thank you.”” Michael never heard from the caller again.

Fulkerson declared the mother had said “she is willing to do anything to stop or delay the [F.’s] from adopting Anthony.” The mother had made negative remarks about the F’s., claiming they are ““vindictive”” and ““selfish”” and their “only goal is to ‘destroy’ the child.” Fulkerson said she has observed the F.’s to be “wonderful and loving caretakers” and the mother to “act in unstable, unpredictable and erratic ways.”

The mother submitted a declaration in response to the application. She claimed she drove to Lake Forest from her home in Newport Beach around 11 o’clock on June 13 to “meet with a young man selling an ipod [*sic*] on Craigslist.” She stopped at a

market and made a purchase to get cash, “then continued to follow the directions given to me and after I parked my car on the street behind the car described to me by the owner of the ipod [*sic*], I noticed a large woman walking towards the car.” The mother “took off [her] white leather driving gloves that [she] had purchased specifically to protect [her] new car and keep it clean,” then got out of the car. The large woman asked her what she was doing there; the mother did not know who she was and was surprised by the confrontation. The mother walked to the driver’s side of the car parked ahead of her to meet the owner of the Ipod. They talked for a few minutes, and she left. The mother denied making negative statements to Fulkerson and characterized the incident as a “freak encounter.”

The mother submitted a copy of an email from her Yahoo account to the Craigslist posting sent on June 12. She also submitted a copy of a receipt from Ralphs Market on Lake Forest Drive, showing a debit purchase of a bottle of wine with \$200 cash back on June 13, 2009. The receipt showed the time of purchase as 12:52 p.m.

The hearing began on August 3, 2009. Nicholas Nagel testified he was employed by Shelby’s uncle, Robert Davis, to maintain his yacht, which Davis keeps at a private dock in front of the beach house owned by his wife’s family. The house and the dock are on Bayfront Drive on Balboa Island. On July 18, 2008, Nagel was working on Davis’s yacht when the mother walked down the ramp and began asking him questions. She first asked if he knew where Bobby was. Davis’s nickname is Bobby, so Nagel knew “she knew something about the family, the boat and the house that is on Balboa Island.” The mother then told him there had been an “incident” that had happened at the house for which Davis was responsible. The mother asked Nagel if he had seen Anthony swimming with two other children a few days before. “She was concerned because Anthony, supposedly, did not know how to swim, and she said that they were unsupervised at the time when they were swimming on the beach.” Nagel told the mother he had seen the children swimming many times and they were always supervised.

He felt the mother was “prying for information” about the family members “and how the boat and the house and all the people involved were connected.” Although she continued to question him for 20 to 30 minutes, Nagel did not give her any information. Nagel called Davis after the mother left because he was “concerned.”

Michael F. testified about the incident on June 13, when the mother appeared on their street. He explained they live on a cul-de-sac in a condominium complex with “probably 50 [condos] on each side.” He recognized the mother while he was waiting to make a right turn out of his street as she was making a left turn into his street. After Shelby returned to the car after confronting the mother, the family resumed driving toward their original destination. But Michael felt uncomfortable and a little afraid. “I was concerned that she was sitting outside my house.” So they turned around, went home, and called the police.

Shelby testified that when she confronted the mother, the mother said she was on the street to meet a friend. After they talked, the mother walked up the street and opened the passenger door of a parked car. Shelby could not see if there was someone else in the car. Shelby confirmed the incident was “about noon” and that the mother was wearing latex gloves.

Shelby was “furious” when she saw the mother on her street. She understood the mother was under court order to stay away from them, and this incident coupled with the incident a year earlier where the mother had shown up at her family’s beach house made Shelby “absolutely” concerned for her family’s safety. Furthermore, Shelby was aware that the mother had obtained personal information about a previous visitation monitor and called her at home. Shelby was upset and crying as she testified “[b]ecause I just want [Anthony] to have a normal life. . . . [T]here are reasons that we chose to have our information confidential. And I feel like that’s been ripped from us, that we don’t have that anymore.”

Shelby was also concerned about the telephone call that Michael received at work. “It’s somebody warning us. Nobody knows – not even my family knows her name, her – nobody knows what’s going on – specifics and the fact that somebody found my husband’s work number, which is not out there. We don’t give that to anybody, and that they would call him just – it was a warning or – you know, how does that not freak you out?”

Shelby testified she has trouble sleeping because of the worry over the mother coming back to her house. “I don’t really trust Anthony playing out in front without me . . . . [¶] . . . I have a 14-year-old that I’m scared to leave at home.”

Fulkerson testified she was concerned about the mother’s unpredictable behavior. “She stressed that this is her only son, that she will tie things up in court, that she has lots of money for an attorney, that she will delay the process as long as possible. She was agitated and angry on the phone. And she expressed, even at one point, a threat of suing if she wasn’t able to see her son.” When Fulkerson said in her declaration that the mother would do “anything” to prevent Anthony’s adoption, she meant “[t]he demand of mother was getting – it was getting towards kind of a desperation and concern about – as things were not going her way legally, there was more kind of threats to a lawsuit, on an ongoing legal battle, more anger in her voice about the caretakers that concerned me, the language she used towards them that concerned me.”

Fulkerson viewed the mother as unstable because of “the way she goes from a calm state to an almost abrasive, very angry demeanor within – almost immediate when you discuss something that upsets her or she’s not – doesn’t want to hear.” The mother made threats to a previous social worker that “she was going to take her down.” She also called a visitation monitor “screaming on the phone discussing the visits and the case and testimony.” Early in the case, the mother “followed the [previous] foster parents and child after a visit.” After that, visits were moved to SSA’s offices, and the mother

was told she could not leave until after the family had left. The mother constantly tested this rule and once pushed the monitor when she was asked to stay at the visitation site.

The juvenile court found clear and convincing evidence to issue the restraining order. “The combined events here are sufficient to show a pattern of conduct related to stalking and also show a credible threat as to the caretakers, their family and the . . . minor.” It did not believe the mother was on the F.’s street to buy an Ipod. “Her story . . . really was not supported by the evidence . . . . And, certainly, her story regarding the times . . . was not consistent with the grocery store receipt that she produced.” The court felt the coincidence was too unlikely. “[O]f all the places she could buy an Ipod, [that] she would . . . purchase it on the street in the same cul-de-sac where the caretakers live together with all the other facts that are before the court just is not reasonable.” The court also found the F.’s suffered substantial emotional distress. “They testified about their concern, their fear, their fright.” The mother was ordered not to “harass, attack, strike, threaten, assault, hit, follow, stalk, molest, destroy the personal property of, disturb the peace of, keep under surveillance or block the movements of the [F. family]” and to “stay at least 100 yards from them.”

## DISCUSSION

The mother contends the juvenile court’s order must be reversed because there is not substantial evidence that she engaged in “stalking” or “molesting” behavior. We find there is ample evidence in the record to support the court’s finding that the mother’s actions fall within the purview of the statute authorizing a restraining order. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210.)

Welfare and Institutions Code section 213.5<sup>1</sup> authorizes the juvenile court to issue a restraining order in a dependency proceeding “enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child [or

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

current caretaker of the child] . . . .” (§ 213.5, subd. (a).) “[T]he term ‘stalking,’ as utilized in section 213.5, does not refer exclusively to the act of literally following someone, although it certainly includes that conduct. Instead, it refers broadly to conduct that is designed to ‘follow’ a particular person in a more general sense, as in to pursue, monitor, watch or keep that person under surveillance for no legitimate purpose, and with the consequent effect of seriously harassing, alarming, annoying, tormenting, or terrorizing the person being followed, pursued, monitored, watched or kept under surveillance. [Citations.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1511.)

Likewise, the term “molesting” in section 213.5 is construed more broadly than merely referring to sexual misconduct. ““‘Molest is, in general, a synonym for annoy. The term ‘molestation’ always conveys the idea of some injustice or injury. Molest is also defined as meaning to trouble, disturb, annoy or vex. [Citation.]” [Citation.]” (*In re Cassandra B., supra*, 125 Cal.App.4th at p. 212.)

The evidence supports the trial court’s belief that the mother’s appearance on the street where the F.’s lived was not a coincidence. She did not produce any identifying information about the alleged seller of the iPod or the directions the seller allegedly gave her. She did not tell Shelby she was on the street to buy an iPod but said she was there to meet a friend. The receipt showed the purchase of the wine and the cash back occurred almost one hour after the confrontation between the mother and Shelby. The juvenile court was entitled to conclude that the mother constructed the iPod story to cover her tracks.

The evidence also supports the conclusion that the mother uncovered confidential information about the F. family, which allowed her to appear at their residence and at the vacation home for their extended family. This conclusion is bolstered by evidence of incidences with a previous foster mother and a visitation monitor where the mother violated other confidentiality boundaries.

The mother's violation of the F.'s confidentiality clearly constitutes both stalking and molesting within the terms of section 213.5. The mother's parental rights have been terminated. The F.'s and Anthony are entitled to the opportunity to move forward with their family life without fear of the mother's interference or intimidation.

DISPOSITION

The order is affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

ARONSON, J.